IN THE COURT OF APPEAL **CA-2025-002824**
CIVIL DIVISION
ON APPEAL FROM THE ADMINISTRATIVE COURT
MRS JUSTICE TIPPLES **AC-2024-LON-002414; [2025] EWHC 647**
B E T W E E N

THE KING (on the application of GRACEGUARD SERVICES LIMITED

trading as SEASONED HANDS CARE)

Appellant/Claimant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent/Defendant

RESPONDENT'S SKELETON ARGUMENT
(Respondent's Notice and responding to the appeal)

References to AB/[x]/[x] are to pages and paragraph numbers in the Appeal Bundle.

A replacement version of this skeleton has been prepared (on 13 October 2026 with updated bundle pagination references and an amendment to [13] and at [17] to reflect that the Respondent is now female.

Introduction

1. The Appellant appeals the order of Tipples J of 26 February 2025 staying its application for Judicial Review, issued in the High Court in London, on forum non conveniens grounds [**AB p60**].

2. The Claim had sought to challenge the Respondent's decision of 1 May 2024 to remove the Appellant from the register of Licensed Sponsors on the basis of the SSHD's concerns relating to:

    a. the disparity between the description of the Appellant's operations in their representations and their records showing the number of employees and hours worked; and

    b. the lack of adequate responses to the requests for further information by the SSHD.

3. The grounds of Claim raised 5 grounds for judicial review, the first of which ran the same ground as the principal ground of appeal to the (English) Court of Appeal in *R(Prestwick Care (Prestwick Care Ltd) v. SSHD* [2023] EWHC 3193 and sought to rely on permission

having been granted in that case [**AB p180** at [14]] (that appeal has since been dismissed: [2025] EWCA Civ 184; [2025] 1 WLR 4761see at [1]-[2]).[1]

4. The Respondent submits that the Judge was correct for the reasons she gave.

5. Initially there had been a significant disparity between the parties' positions on the correct legal principles:

    a. The Appellant had submitted that paragraph 11(c) of Schedule 4 to the Civil Jurisdiction and Judgments Act 1982 (**"1982 Act"**) required the English Court to accept exclusive jurisdiction on the basis that the Claim concerned an entry in a public register [**AB p152** at [12]] and that register was held in England.

    b. The Respondent[2] had initially submitted in the AOS that section 49 and Schedule 4 to the 1982 Act meant that the Scottish CSOH had exclusive jurisdiction and that the claim should be "struck out" on forum non conveniens grounds.

6. By order dated 11 September 2024, Lavender J listed a hearing to determine the forum non conveniens application and noted (correctly) that "*the jurisdictional rules which apply in civil cases are not necessarily applicable to public law cases*" [**AB p160**]. His order made reference to paragraph 3.108-3.111 of De Smith's Judicial Review 9th edition and made procedural directions for the filing of evidence and sequential skeleton arguments.

7. The Respondent filed its skeleton argument early, correcting the incorrect submissions in the AOS, setting out the legal principles which applied and addressing the passage in De Smith[3] and the relevance of *Tehrani v Secretary of State for the Home Department* [2006] UKHL 47 [2007] 1 AC 521 [**AB p120-134**]. The Respondent submitted that the Administrative Court in London has a discretion to hear the claim, but should consider the principle of forum non conveniens at common law (in particular as analysed by Lord Goff

[1] The CA held that it would be contrary to principles established in case law to require the SSHD to carry out a "global assessment" including social care consequences for local authority commissioners of social care [95]-[105]. The CA decision has subsequently been followed by the CSIH in Scotland in *Pristine Healthcare Group Ltd v SSHD* [2026] CSOH 13 at [32] and [47]. The Prestwick JRs have now been transferred by the Admin Court to the North Eastern Region, which is where the Prestwick business is located (Newcastle): [2025] EWHC 2598 (Admin). At the time of the present JR, the leading Scottish case was *Experience India Ltd v The Secretary of State for the Home Department* [2016] CSOH/161 considered by Tipples J at [16]. In Experience India the CSOH did not require or support a "global assessment."

[2] Represented by different Counsel at the time.

[3] Addressed in the Respondent's skeleton for the High Court at [9]-[14] **AB p122-124.**

in *Spiliada Maritime Corp v Cansulex* [1987] AC 460) and the significantly greater connection between this claim with Scotland. Schedule 4 of the 1982 Act, and the previous Brussels Recast Regulation, could not apply to this case because it concerned an immigration decision expressly excluded from the ambit of civil claims under those provisions.

8. The Appellant then altered its own position, accepting the principles which the Respondent had set out in its skeleton argument, and the applicability of the analysis of Lord Goff in *Spiliada.* The Appellant submitted that the English, rather than Scottish Court, was "*the forum the case could most suitably be tried for the interests of all the parties and for the ends of justice*." [**AB p135-145**].

9. Therefore, before Tipples J, there was considerable commonality of position between the Respondent and Appellant, and principally different emphases on the facts. As noted by Tipples J, the Appellant had not, however, put in any evidence to explain the reason for it, or the lawyers, having brought the claim in England as opposed to Scotland (which Lavender J had granted permission for and the importance of which had been emphasised in the Respondent's early skeleton). The material which had been submitted by the Appellant on 12 October 2024, showed that the lawyer acting for the Appellant ought to have known that the Administrative Court may well query why the claim had been issued in London rather than Scotland, because this had occurred in a different case for which the same lawyer had acted before this claim had been issued [**AB p147-150**].

10. Tipples J considered the arguments made and the material submitted and gave a detailed ex tempore judgment [**AB p102-119**] which the Respondent submits:

    a. Was lawfully available to her in her discretion; and

    b. Contains no error of law and indeed applies the principles from the cases which both parties (by that time) accepted contained the relevant principles, suitably adjusted to be suitable for the subject matter of this judicial review claim.

11. Before Tipples J, the Appellant did not advance Ground 2 (estoppel) at all. The Respondent accepted that, had the Appellant commenced proceedings in Scotland up until 14 August 2024 (the date of the AOS contesting jurisdiction), the Respondent would not have objected to any extension of time in Scottish proceedings [Tipples J at [52] **AB p118**]. However, by the hearing before Tipples J on 26 February 2025, the Respondent would now object to an

extension of time were the Appellant to have sought to file a (late) protective claim in Scotland.

12. There was then a considerable unexplained delay of 6 months before the Appellant applied for permission to appeal. The Respondent submitted that the appeal was out of time because time ran from the Order of Tipples J, and not from Tipples J's refusal of permission to appeal (CPR 52.12: *McDonald v Rose* [2019] EWCA Civ 4, [2019] 1 WLR 2828 at [13], [21], [25]; *Sayers v Clarke Walker* [2002] EWCA Civ 645, [2002] 1 WLR 3095 at [12]-[16]).

13. Lewis LJ has granted permission for this appeal on the basis that there were compelling reasons for the appeal to be heard because: "*The question of when a court in England and Wales should stay a claim brought against a decision made in England, pursuant to legislation which applies there and to other parts of the United Kingdom, is an important one on which there is limited case law.*" The Appellant has since been granted a sponsor license following a separate fresh application. Therefore, the original judicial review claim is academic. However, there remain compelling reasons to hear the appeal.

14. This skeleton argument addresses:

    a. The applicable legal principles for forum non conveniens applications in Judicial Reviews of this nature; then

    b. The Grounds of appeal pursued.

15. The Respondent submits that:

    a. The Judge was correct for the reasons she gave; and

    b. That none of the other cases or materials referred to in the permission grant, or in the parties' earlier submissions leads to a different result in this case.

Applicable legal principles

16. The Respondent submits (and submitted below) that the following principles apply to determining which Court should hear a judicial review of a decision of the Respondent to revoke a sponsor license.

    a. Firstly, the SSHD in making a decision to revoke a Sponsor license for sponsoring employees for the purposes of section 3 of the Immigration Act 1971 is the Crown

acting in Right of His Majesty's Government in the UK, is treated, as a matter of legislative domicile as having the seat **simultaneously *"in every part of, and every place in, the United Kingdom"*** (see section 46 of the 1982 Act).

b. Secondly, section 20 of the 1982 Act provides that Schedule 8 has effect to determine in what circumstances a person may be sued in *"civil proceedings"* in the Court of Session. The Secretary of State may be sued in civil proceedings in Scotland (see paragraph 1 of Schedule 8 and section 46 of the 1982 Act). As noted in *Tehrani* [42]-[43] and *De Smith*, there has been some uncertainty in the case law, as to whether judicial review proceedings can sometimes be *"civil proceedings"* for the purposes of section 20 of the 1982 Act. Three Administrative Court cases have progressed on the basis that they are not, and the common law applies instead but exercising care not to produce a different result than provided for in legislation.[4] The law on this particular issue does not need to be resolved in these proceedings and does not affect the result.[5]

c. Thirdly, as there is no relevant *"exclusive jurisdiction"* provision by reason of section 46 and/or any statutory provision, there is potentially jurisdiction in both Scotland and England to consider lawfulness under the Courts' supervisory jurisdiction. In

[4] *R (on the application of Girgis) v Joint Committee on Intercollegiate Examinations* [2021] EWHC 2256 (Admin) (**"***Girgis***"**); *R (on the application of Karanja) v University of the West of Scotland* [2022] EWHC 1520 (Admin) (**"***Karanja***"**); and *R (Competition and Markets Authority) v Competition Appeal Tribunal* [2024] EWHC 904 (Admin) [2024] Bus LR 1282 (**"***Sika"*).

[5] Section 16 of the 1982 Act provides that Schedule 4 (first relied on by the Appellant) only has effect for determining what courts have jurisdiction in proceedings where the subject matter of the proceedings was within the scope of the Regulation No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (**"Recast Brussels Regulation"**) as determined by Article 1 of the Recast Brussels Regulation. Article 1(1) of the Recast Brussels Regulation states:

> *"This Regulation shall apply in civil and commercial matters whatever the nature of the court of tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority"* (emphasis added).

A decision to remove an employer from a Sponsor License Register for the purposes of immigration control is a prime example of an administrative matter (*iure imperii*, rather than *de iure gestionis* as determined by the CJEU in C-641/18 *LG Rina SpA Ente Registro Italiano Navale* [34]-[41]. See Lord Hope in *Tehrani* at [40] (referred to below before Tipples J). See further at [39]-[47] for an analysis of the principles.

determining which, the Courts should follow the principles of *forum non conveniens,* principally analysed by Lord Goff in *Spiliada* between 474B- 484D. In particular;

i. Forum non conveniens was originally a Scots law concept. The Latin tag (conveniens) is not apt. The question is not one of practical convenience but is one of which is the "*appropriate*" forum (per Lord Goff at 474C-H-475B). It has long been applied in judicial review claims (see *Tehrani* at [55] citing *Sokha v SSHD* (1992) SLT 1049).

ii. The Court should consider *Spiliada* principles (a)-(f) (Lord Goff k 476C-478E). These involve the Court identifying the factors in favour of another forum than the one in which the claim was issued (here Scotland). If the Court concludes that there is some other "*available forum which prima facie is more appropriate for the trial of the action it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted* (factor f)."

iii. Lord Goff set out the principles applicable where proceedings would be time barred in the other jurisdiction 483F to 484E.

iv. At 484C-D, Lord Goff continued to note that "*as the applicable principles become more clearly established and better known, it will, I suspect become increasingly difficult for plaintiffs to prove lack of negligence in this respect*…."

d. Fourthly, it is not correct to focus only on the question of whether the substantive law relevant to the claim is intended to be identical in Scotland and England. In particular:

i. The exercise is always one of *"judicial discretion to the facts of the particular case; but the judge in his consideration of the facts should not wear blinkers*" (Lord Diplock in *MacShannon v Rockware Glass Ltd* [1978] AC 795 at 813A). There should be a "*reasonable consistency*" so that "*lawyers may know broadly what advice to give clients*" (813G).

ii. Judicial review of Tribunals is, in the legislative scheme, excluded from the scope of Schedule 8 of the 1982 Act by paragraph 12 of Schedule 9 of the 1982 Act: *Tehrani* per Lord Hope at [44]-[46], which means that section 20 could not have effect in that case.

iii. In some public law contexts there are discrete legislative provisions which govern the location of any appeal from a decision in an immigration statutory appeal or immigration judicial review for which jurisdiction has passed to the UT: section 13 of the Tribunals, Courts and Enforcement Act 2007 (*KP (Pakistan and another) v The Secretary of State for the Home Department* [2019] EWCA Civ 556; [2019] 1 WLR 5631 at [14]-[15] and [17]-[20]; *Khurshid v Secretary of State for the Home Department* [2021] EWCA Civ 1515 at (at [14]-[15]); and *R. (on the application of Kashif) v Secretary of State for the Home Department* [2016] UKUT 375 (IAC)).[6] For earlier authorities (predating these provisions) see further *Tehrani* [25] (Lord Nicholls) and [49] and [62] (Lord Hope) [107] Lord Rodger; *R (Majeed) v Immigration Appeal Tribunal* [2003] EWCA Civ 615; and *R (Shah) v Immigration Appeal Tribunal* [2004] EWCA Civ 1665.

iv. In tax cases Article VI and Article XVIII.of the Union of Scotland Act 1706 may have relevance. There are several older tax cases, considered in *Tehrani* at [13] - [15], [58] and [104]-[105]: *Rutherford v Lord Advocate* [1931] SLT 405 and *Lord Advocate v RW Forsyth Ltd* (1986) 61 TC 1 and *R v Income Tax Special Purposes Commissioner ex p RW Forsyth* [1987] 1 All ER 1035 (analysed by Lord Hope at [58] in Tehrani as a decision of the English Court to decline to accept jurisdiction on the basis of forum non conveniens as the appropriate forum for a purely Scottish tax case was Scotland rather than England, notwithstanding the presence of the decision maker in England).

v. Where the substantive law applicable to some or all grounds is different in England and Scotland it is relevant to consider whether the Scottish/ English

[6] The Upper Tribunal took a narrower view of when something will be *forum non conveniens* than *MacShannon, Spiliada* and Tipples J in the present case. The Upper Tribunal held that if there is jurisdiction to entertain the claim, it follows that unless the court is persuaded that it is not the appropriate forum, it should proceed to entertain the claim; the question therefore is whether it is appropriate to entertain the claim (at [12]). The Respondent's position is that the Upper Tribunal is not correct in its analysis of what is meant by *forum non conveniens* as it is inconsistent with the approach in *MacShannon* and *Spiliada* as set out above; namely first, whether there is another available forum which is clearly or distinctly more appropriate than the English forum, and if so, whether there are any special circumstances by reason of which justice requires that a stay should nevertheless not be granted. It is noteworthy that both *MacShannon* and *Spiliada* were not referred to by the Upper Tribunal in their judgment.

Courts could only hear some of the grounds and duplication of proceedings was inevitable (*R (Competition and Markets Authority) v Competition Appeal Tribuna*l [2024] Bus LR 1282 (Sika) at [54]-[57] especially at [57]).

vi. It may be relevant to consider comity and the resourcing of the Court system in England and Scotland. In *MacShannon*, a case where a Scottish claimant made a personal injury claim against an English domiciled defendant relating to an injury that occurred in Scotland in the English Courts, Lord Diplock held that the fact that many other actions for industrial injuries sustained by Scotsmen in Scotland are being brought in England should not be treated as irrelevant since, if it were to become a common practice, the total waste of time and effort would be substantial (at 813E-H and 814A). The Courts should put a stop to "*the bringing in England of what may be called "Scottish" actions"* (Lord Keith at 833D). The fact that a solicitor has advised that an action be brought in England or that there may be greater prospects is not sufficient reasons not to stay the English action (829E-F per Lord Keith: see also *Sokha* referred to in *Tehrani* at [55] per Lord Hope).

17. This analysis also echoes what has occurred in practice. There are indeed Scottish Judicial Review claims in the Court of Session which consider the lawfulness of the Secretary of State's decision to revoke an employers' Sponsor Licence (made in Sheffield). The English Courts do not have exclusive jurisdiction in Sponsor License cases across the UK. Procedural requirements and the law relating to remedies in judicial review cases are not wholly identical in Scotland and England. The Secretary of State submits that, while she is domiciled (by reason of section 46) in all parts of the UK simultaneously, it would be unhelpful for a practice to develop whereby "Scottish" judicial reviews were issued in London rather than Scotland, and to deprive the Scottish Courts of their usual jurisdiction and which could disrupt the usual orderly delivery of justice to the parties. Opportunistic forum shopping should be discouraged. There may be cases where it would be inappropriate for the Secretary of State to take a timing point, where a claimant would not have anticipated that any point would be taken on forum non conveniens between England and Scotland, but that is not this case on the particular facts, and where, as Tipples J found,

the solicitors were well aware that the Administrative Court would likely raise the issue of their own motion, and once the SSHD did so in the AOS in August 2024.[7]

18. The Secretary of State respectfully submits, so far as relevant for setting out the appropriate legal framework for this appeal, that Lord Rodger's analysis (obiter) in *Tehrani* at [107] that the Court in the location of the decision maker would usually be the appropriate forum, is inconsistent with *Spiliada*, *MacShannon* and *Sohka* and should not be applied to this case, or more generally to judicial review decisions of the SSHD's decision to revoke a sponsor license of a Scottish domiciled employer, in respect of work provided by employees in Scotland, to service users in Scotland, under contract with Scottish Local Authorities.

Test on appeal

19. So far as is relevant to this appeal, permission having been granted on compelling reasons rather than the merits, the test for an appeal in this context remains that applicable to a case management discretionary decision by the first instance judge, based on the evidence and submissions heard by that Judge. As Lord Templeman held in *Spiliada* at 465G **"***an appeal should be rare and the appellate court should be slow to interfere*."

Tipples J's decision

20. The Secretary of State submits that Tipples J was correct for the reasons she gave which are relied on in full.

21. First, applying the *Spiliada* principles as set out above, Tipples J concluded that on the facts of the case, Scotland is an available forum which is clearly or distinctly more appropriate than England [**AB p116** at [45]-[49]].

22. Second, applying the *Spiliada* principles as set out above, Tipples J then considered whether there were any special circumstances by reason of which justice requires that the trial should, nevertheless, take place in England and Wales [**AB p117** at [50]-[56]]. Tipples J assessed all relevant factors and concluded that the Claimant did not discharge the burden

[7] The SSHD having made clear in the hearing before Tipples J that, had the Claimant sought to bring a JR in Scotland at any time prior to 14 August 2024, the SSHD would not have opposed an extension of time. However, the dispute having become clear, and especially Lavender J had made the order in September 2024, by the time this matter reached Tipples J in February 2025, the SSHD would, by that time, take a time point if proceedings were begun in the CSOH.

on it such that a stay should not be granted and the claim allowed to proceed in England and Wales [**AB p119** at [56]]. Beyond that, there is no evidence before the Court to identify what are the special circumstances in this case to show that justice requires that the trial should take place in England and Wales [**AB p119** at [56]].

23. Moreover, Tipples J was referred to *Tehrani* by the SSHD in the SSHD's skeleton argument [**AB p122-123**]. It was not an error for her not to have referred to it separately. As set out above. *Tehrani* confirms that the correct approach is that set out by Lord Goff in *Spiliada*, which Tipples J considered in detail and accurately applied to the facts before her.[8]

24. Both *Tehrani* and *Spiliada* consider the tax cases to which Lewis LJ referred in the grant of permission. There are, moreover, two *Forsyth* decisions as noted above in the context of tax, one from Scotland and one from England, which point in different directions. The House of Lords in *Tehrani* tentatively preferred the approach of Macpherson J in the English decision to the approach of Lord Wylie in the Scottish decision which had held that Scottish Court's had exclusive jurisdiction over the Commissioners (before the reorganisation of HMRC and establishment of the FTT). The Secretary of State submits that this is correct. The Secretary of State submits that Macpherson J was correct to have applied the forum non conveniens principle at 1039h. The passage that suggests that the Special Commissioner would be right not to resist the jurisdiction of the Scottish Courts at 1039G-H is (a) correct on the facts of that case, which had a Scottish "feel" and (b) there does not appear to have been any delay issue (indeed the taxpayer had commenced proceedings in Scotland in time in any event, unlike in the present case).

Additional case

25. As regards the additional case *R (Director General of Electricity Supply)* unreported 3 February 1997 (**"***Electricity Supply***"**). This is not relevant, as in that case, no point appears

[8] In an article concerning *Tehrani* by Chris Himsworth, *Inter-jurisdictional questions in judicial review,* Edin. L.R. 2007, 11(2), 277-283, Himsworth concluded that as a result of *Tehrani* two things have become clearer but other questions may now be raised. Firstly, on the basis of the *"concurrent jurisdiction"* approach, both the Court of Session and the English High Court have jurisdiction to accept applications for judicial review in immigration cases. Secondly, we also know that, in the application of *forum non conveniens* principles to the extraordinary circumstances of *Tehrani*, if the argument that the English High Court was a more appropriate forum had been presented, it would have been rejected, despite an English-based adjudication being challenged.

to have been taken on *forum non conveniens* so far as the Lexis transcript of Peter Gibson LJ's decision appears to show. That case records that the Director General of Electricity supply took no issue with the Claimant (a Scottish company) having brought proceedings in England. The legal issue in that case related to the setting of license terms for Scottish Power by the Director which Scottish Power argued were irrational and in part by assessing various prices by reference to English prices and not referring the matter to the Monopolies and Mergers Commission which had relevant technical knowledge of the differences in the electricity supply market in England and Scotland.

26. There is nothing in this case which would have assisted the Appellant, had they sought to rely on it.

Appellant's grounds

27. There is a substantial amount of common ground. In particular, the Appellant and Secretary of State both contend that the key cases are *Spiliada* and *Macshannon's* case.

Ground One - Irrationality

28. The first ground of appeal is that the Court irrationally concluded that Scotland is the more appropriate forum and/or found special circumstances did not exist despite the Respondent's pre-action correspondence electing the Government Legal Department in London as the address for service of any proceedings.

29. The Judge was entitled to conclude as she did based on the submissions and evidence before her, and the lack of evidence from the Appellant as highlighted at [**AB p118** at [53]] - [**AB p119** at [56]]. The Respondent candidly accepted that the letter referred to the GLD and the new proceedings email address and accepted that the Respondent would not have taken a time point if, once the Appellant had seen that the Respondent took a jurisdictional point, the Appellant had issued in Scotland, no point on delay or timing would have been taken. The Respondent further addressed this in the position taken on costs.

30. However, this was not the only relevant fact. The Appellant's solicitor would have been aware that the Court was likely to ask why the Administrative Court in London was the correct location, based on their direct experience with another case before this claim was issued. Furthermore, the point was clearly encapsulated by Lavender J's order in September 2024. The Respondent then rapidly, and significantly earlier than 21 days before the

February 2024 hearing, set out the correct legal position, with which the Appellant then agreed.

31. The Judge made reference to the PAP correspondence at [48] and had rational due regard to it. However, by itself it did not render England (London) the more appropriate forum in all the circumstances of this case. To use the language of Macpherson J in *Forsyth*, this case had a predominantly Scottish "feel" by virtue of all the other connecting factors.

Ground Two - Estoppel

32. The short answer to this ground is that it was not pursued in the hearing [**AB p102-119**] or the Appellant's skeleton argument [**AB p135-145**], nor was it included in the grounds of appeal considered by Tipples J [**AB p57-59**] [**AB p55-56**]. Therefore, it is not available on appeal.

33. In any event, it would be bound to fail due to the lack of any new evidence filed pursuant to Lavender J [**AB p160-161**]. The issue was a matter for the Judge to determine, which she did on the basis of the context and content of the relevant documents before her. It was not an arguable abuse of process/estoppel for the Respondent to submit that the more suitable forum was Scotland in the context of this case. While the precise arguments relating to jurisdiction had altered between the AOS [**AB p168-187**] and the Respondent's skeleton (filed more than 2 months before the hearing [**AB p120-134**]), the Respondent had made clear from the AOS that jurisdiction was contested. The Appellant's solicitors should have been aware from acting in a different case that the Administrative Court was likely to require confirmation of the suitability and basis for jurisdiction (a point noted by Tipples J in her judgment at [**AB p118** at [52]-[55]]. It was not unfair in all the circumstances for the Respondent to maintain its submission of forum non conveniens, first made in the AOS (albeit pursued on ultimately different grounds, which the Appellant had adequate time to consider and respond to).

34. Furthermore, the Appellant's submissions based on private law estoppel are misconceived. It has long been established that private law estoppel has no application to public law. The argument appears to be that it would be an abuse of process for the Respondent to contest jurisdiction. However, this misunderstands the nature of *forum non conveniens.* It is a principal of judicial comity, not capable (in a public law context) of being conferred by a

mistake in correspondence[9]. A public authority is not usually compelled to maintain a mistake, especially where sufficient opportunity is provided to the Appellant to address the correct legal position (as occurred in this case).

Ground Three – Alleged Misdirection

35. The third ground of appeal is that the Court irrationally/unlawfully focused on the closer connection test.

36. The Judge directed herself correctly to the relevant approach in *Spiliada,* as set out above, including at [**AB p105** at [9]] – [**AB p107** at [15]], and [**AB p118** at [54]]; and *MacShannon* at [**AB p106** at [12]], and applied that test to the evidence (and lack of evidence) before her. This was a paradigm case with a Scottish "feel," where the Applicant, its employees, local authorities which contracted for its services, and ultimate service users were all exclusively in Scotland. The decision challenged related to Scottish individuals, and effects were felt in Scotland. The principal ground for judicial review was that the SSHD had failed to take a "global assessment" of the impact of the decision to revoke, which on the asserted facts of the case, related wholly to impacts in Scotland. Such assessment, had it been arguable that it should have been carried out, would have been carried out by reference to Scotland and by reference to the Scots legal framework and impact on people resident in Scotland.

Ground Four – irrational focus on the grounds of review

37. The fourth ground of appeal is that the Court irrationally granted the Respondent's application on account of the content and substance of the grounds of review.

38. The fact that the Judicial Review challenge was brought by a Scottish business; in relation to whether it could continue to sponsor employees in Scotland; to provide care services to Scottish care users; under contract with Scottish local authorities; and that the grounds for judicial review related to the content of such contracts and alleged harm which arose solely in Scotland, were all relevant features to which the Judge was entitled to have regard.

[9] albeit the existence of a contractual jurisdiction clause is a relevant factor, as determined in *Karanja* [57]-[59].

39. There is no error of law in the Court having focussed on the claim brought by the Appellant to determine the Court with which it has the closest connection, and which is most appropriate.

40. The Appellant cannot discharge the significant burden of showing that the decision made by Tipples J was not rationally open to her on the materials submitted (and which were not submitted) by the Appellant, and which facts were not in dispute.

Conclusion

41. The Respondent therefore respectfully submits that this appeal should be dismissed. The Judge correctly applied the principles set out in detail by Lord Goff in *Spiliada* correctly to the context and content of the particular claim. There was no error of law or irrationality in the Judge's approach. The high threshold for success in appeals from a discretionary case management evaluation is not met.

42. Further or alternatively, the legal principles applicable to this context, when applied to the materials submitted by the Appellant and which were before the Administrative Court would inevitably have led to the conclusion that a stay on forum non conveniens was appropriate in this case, bearing in mind comity between the Courts of England and Scotland and that this was, in reality, plainly a Scottish "feel" case.

KATHERINE APPS KC
HANNAH FRY
39 ESSEX CHAMBERS
27 March 2026

13 October 2026 (Updated page references)